

1 MR. LEVINE: -- it's not -- it's not
2 restricted.

3 MS. MANDEL: But then -- but then it will --
4 then you might hear like what -- you know, "may also",
5 you're starting a reg. with "may also" and you have a
6 whole separate reg. so there may be a question of
7 whether they have to be in one reg. together, just --

8 MR. LEVINE: Or just the person against whom
9 the jeopardy is made --

10 MS. MANDEL: Or just say "may file" -- "may
11 apply".

12 MR. LEVINE: -- may also apply.

13 MR. VINATIERI: Yeah, that would -- that would
14 work.

15 So, just delete the "in lieu of filing a
16 Petition for Redetermination," but the person against
17 whom may also apply.

18 MS. MANDEL: Yeah. And OAL may tell you you
19 can't have the "also" in there because it's a separate
20 reg.

21 But you don't necessarily need it.

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SECTION 2047

MS. PELLEGRINI: Moving on to 2047, Limitation Period for Applications for Administrative Hearing.

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SECTION 2048

MS. PELLEGRINI: 2048, Contents of Application for Administrative Hearing.

MS. MANDEL: Can I just give you some other words back on that same one?

If you have to do it as a separate reg. "person against whom a jeopardy determination is filed" -- "jeopardy "determination is made may file an application for an administrative hearing."

And then -- then it's -- then it's -- then I think it's -- it could be clear -- more clear that a Petition for Redetermination of the jeopardy is a separate thing from the application for an administrative hearing.

And this provides you can do both or you might do one or the other. But -- but this is a separate application, because that's what you contemplate, right, a separate application for it?

MR. HELLER: Correct.

MS. MANDEL: I mean, they could be combined in one document, but a separate application.

MR. HELLER: Yes.

MS. MANDEL: Sorry.

MR. HELLER: No problem.

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SECTION 2049

MS. PELLEGRINI: 2049, Option to Post Security.

MR. VINATIERI: I disagree with this. I'm trying to remember what it was.

I -- I just -- I don't recall what it is at this point. I'll check that later

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SECTION 2049.5

MS. PELLEGRINI: 2049.5, the Assignment of Application for Administrative Hearing to Appeals Division.

MR. VINATIERI: This is Joe. I had -- I wanted to make sure that there was some time limitations on this to make sure things were moving quickly. Because we are talking about, in some cases, sale of property and a person's livelihood.

So I had added this inf-- text under (b) about the Appeals Division will hold the administrative hearing, and I put "within 30 days of assignment to the Appeal Division, and shall issue a determination within 30 -- 30 days as to each issue raised in the application."

And I also -- on (c) I took away the discretion language here where it says, "the Board has discretion to grant or deny an oral hearing for application."

I -- my view is that if somebody goes through the appeals process on one of these administrative

1 hearings on jeopardy, and they are denied at the Appeals
2 level, that they should have the right by law to have
3 that matter heard by the Board members.

4 This is -- this whole portion is -- is very --
5 can be very, very onerous. And we just want to make
6 sure that in my view, out of an abundance of caution,
7 that due process avails the taxpayer in this situation.

8 MS. MANDEL: It -- it may be they wrote it that
9 way -- I don't know, you may have written it that way
10 because there wasn't a clear statutory right to an oral
11 hearing.

12 MR. VINATIERI: No, there is a statutory -- I
13 believe there is a statutory right to an oral hearing.
14 I don't have it with me here, but it -- it says that you
15 have an oral hearing but doesn't say anything else.

16 There's no --

17 MR. LEVINE: I think the hearing it refers
18 to -- and, again, this is the scenario I can't keep
19 straight, but I think that it's referring to the hearing
20 that is the only hearing held by the Appeals Division.
21 Everything else are conferences.

22 So we do an administrative hearing. And I'm
23 guessing that's why it's structured like this.

24 MS. MANDEL: But is that -- but if the
25 statute -- I mean, the Appeals Division is a creature
26 created by the Board as -- as process.

27 And so, I -- the -- don't know if the statute,
28 if it just says "hearing" --

1 MR. HELLER: It says that, you know, the
2 administrative hearing.

3 MR. VINATIERI: Hearing.

4 MR. HELLER: It doesn't say --

5 MS. MANDEL: And it may be -- I don't know,
6 maybe the Board has delegated those administrative
7 hearings to Appeals.

8 MR. LEVINE: I think that if we have other --
9 other, like revocations of sellers permits --

10 MS. MANDEL: Right.

11 MR. LEVINE: -- I think are hearings done by
12 District, so these aren't the only administrative
13 hearings.

14 MS. MANDEL: Right. And so -- so, if the Board
15 has currently delegated which -- to Appeals those
16 hearings and that that's then going to be in the Appeals
17 Division -- I mean, I can tell you what the answer would
18 be if it was Dean Andal sitting up there. He would tell
19 you, "Anybody wants a hearing before the Board, I'm
20 going to give him a hearing before the Board."

21 But that's -- so that, I guess, is just the
22 explanation of why they've written the thing this way.

23 MR. VINATIERI: Well, I -- I understand and
24 I -- I've only been involved in one or two of these, as
25 I recall, over the years. And I didn't have a problem
26 with what the -- the Appeals attorney came up with in
27 terms of the administrative hearing.

28 But I'm just very sensitive. I mean, this

1 is -- Mr. Levine might disagree with me, but there was a
2 revolutionary war fought over appropriation of property
3 by one foreign government across the -- the Atlantic.

4 MR. LEVINE: Are you casting aspersions on my
5 historical knowledge?

6 MR. VINATIERI: Well --

7 MS. MANDEL: I think it was --

8 MR. VINATIERI: -- yeah.

9 MS. MANDEL: -- our government was -- they just
10 didn't --

11 MR. VINATIERI: So, what I'm -- what I'm
12 looking at is I just want to make sure out of an
13 abundance of caution that there is -- there is plenty of
14 due process here, and I'd rather go overboard than
15 underboard, if that makes sense.

16 MS. PELLEGRINI: On your comment on the time
17 line, the only concern I would have on 30 days to do an
18 Appeals Conference is depending on location they may
19 want it in. It's usually -- kind of for Stephen, but
20 usually never a problem if it's in headquarters or a
21 major town, but sometimes people want them in places
22 that are difficult to get to.

23 MR. SMITH: I was just helping -- yeah, I --
24 this is Steve Smith in Appeals. I've -- my
25 recollection, this has come up in my experience, and
26 Mr. Golomb would know about this. When -- when I
27 researched the statutory construction it seemed to be
28 saying that the administrative hearing was what the

1 Appeals -- the Appeals Division holds, and there was no
2 statutory -- it didn't spell out the -- the jeopardy
3 determination person could have after that an oral
4 hearing, though we always sort of believed, like you
5 said, that if someone wanted an oral hearing they would
6 get an oral hearing. But it's not provided under the
7 statute.

8 MR. VINATIERI: But my understanding has always
9 been that in the law, itself, in the R & T Code, that it
10 sets forth for this administrative hearing and whether
11 there's been an actual delegation from the Board to the
12 Appeals Division to handle it, or it's just kind of
13 happened that way, I don't --

14 MR. SMITH: I was -- I was shocked that, you
15 know, as the Appeals attorney would be holding the
16 Administrative hearing, that under the statute seemed to
17 be the final word. But --

18 MR. VINATIERI: Yeah, it's -- it's -- well,
19 we're in a very Draconian situation here. And that's
20 why -- I just -- I like the abundance of making sure
21 that things move quickly and that -- that they have the
22 opportunity to go in front of the elected Board.

23 MR. GOLOMB: The other key thing through all
24 this is that the staff provide the taxpayer and/or their
25 representative with the documentation supporting the
26 staff's position, because what tends to happen is these
27 are sprung without notice to taxpayers. And as a
28 consequence, the taxpayer and/or their representative

1 upon receiving this doesn't have the background behind
2 all this.

3 And in the case I was involved in, I contacted
4 the staff and they were very uncooperative in explaining
5 their position. And by the time I got the material, 30
6 days had elapsed.

7 So, literally, I was put in the position of
8 having to write a request without knowing what the
9 background of the case was.

10 And so, one of the concerns I have relative of
11 this, is the staff does whatever they do. But they have
12 a legal, if not moral, obligation to provide to the
13 taxpayer or their representative information upon which
14 they can then respond.

15 Because if you have no idea where the staff is
16 coming from, you're kind of shooting in the dark.

17 MR. LEVINE: Abe, are you talking about
18 after -- this is the one that requires a bond or payment
19 to be made?

20 Are you talking about after the -- the appeal
21 is filed or before?

22 MR. GOLOMB: No, they issue the notice.

23 MR. LEVINE: Right. But are you talking
24 about --

25 MR. GOLOMB: And then all of a sudden you get a
26 notice and you have 10 or 30 days, depending on which
27 way you want to go, to respond.

28 And that's assuming you know what's going on.

1 MR. LEVINE: Okay. Just --

2 MR. GOLOMB: But not necessarily is a taxpayer
3 or their representative provided with any information
4 regarding the staff's position.

5 MR. LEVINE: I understand. And I'm far from an
6 expert on this because I'm not a collector and maybe Joe
7 can respond better.

8 But just my gut feeling is until you've --
9 we're talking about a situation where the State feels
10 uneasy and has done a jeopardy because it's afraid the
11 money is going to be missing, and until the taxpayer
12 protects the State by paying or filing a bond, I don't
13 think that the staff should be forced to disclose
14 information that would make it easier for the taxpayer
15 to preclude the collection.

16 But if they --

17 MR. GOLOMB: How can you file if you don't know
18 the staff's position? Once you issue the notice --

19 MR. LEVINE: File -- file an objection.

20 MR. GOLOMB: Well, you can't file a bond. They
21 want cash on the barrel head. They don't take bonds,
22 anyway.

23 MR. LEVINE: Well, there's something in here
24 that allows --

25 MR. GOLOMB: I don't know where you're coming
26 from. You're put -- you're putting -- you're putting
27 the cart before the horse. In other words, the
28 staff -- the State does an action, they file -- they

1 issue a Notice of Jeopardy. The taxpayer is totally
2 unaware. Their representative is totally unaware.

3 How can anybody respond when they have no idea
4 what's going on?

5 How would you respond if you had no idea what
6 was going on?

7 MR. LEVINE: You're wrong. Pull it off. We
8 get lots of -- that's what we were talking about
9 earlier, we gets lot of petitions like -- like that
10 without just --

11 MR. GOLOMB: Okay, you write that and they say,
12 "Well, your -- your grounds are not specific."

13 MS. PELLEGRINI: Okay.

14 MR. GOLOMB: So, that's exactly what comes up.

15 MR. VINATIERI: Let me ask a question. In
16 light of -- we're looking at 2049. I'll give you my
17 specific thoughts. i think Abe said some things, and
18 this is a -- thank goodness this doesn't happen that
19 often. But when it does happen -- and, by the way, I
20 think the staff does a very good job, and this is the
21 nuclear option, usually, because it comes in the context
22 of small businesses and it will shut down a small
23 business. So, I think there's a lot of good
24 discretion that's being utilized by staff. But every
25 once in a while -- and staff, I think, understands this
26 is kind of a nuclear option -- but when it does happen,
27 there's a disagreement, we just need to be very, very
28 careful that over -- an over-abundance of due process is

1 given.

2 And I -- my concern relative to this one today
3 is making sure that when this thing comes back, whatever
4 reiteration it comes back in, that there are some
5 parameters such as I've thrown in or maybe some things
6 that Abe has thrown in.

7 And, David, you're right, this is a -- this
8 isn't kind of a -- a black hole. So -- but it's an
9 important area for -- for a lot of small business
10 taxpayers.

11 But a lot of times we don't know what's
12 happened, what the -- what the Board staff has gotten in
13 terms of information leading them to believe that their
14 security is jeopardized.

15 So, --

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ARTICLE 3
CLAIMS FOR REFUND
SECTION 2050

MS. PELLEGRINI: Okay. Moving on to Article 3, Claims for Refund. 2050. Persons Who May File a Claim for Refund.

MR. VINATIERI: Right. I -- I add "feepayer" in there.

MS. PELLEGRINI: Any other comments?

MR. VINATIERI: I did have another comment under Section (b), and maybe I'm just -- I don't understand this, or I'm -- I have an incorrect knowledge, but I've got a situation where it's the Motor Vehicle Fuel Tax Law, where the -- the entity has filed a claim -- or has filed a claim for refund; the refund was paid by the State Controller's office; and then an audit was done by the State Controller's office, and we disagree with the audit.

And the audit is just wrong. And they're now -- they're now threatening the client that, "Well, you didn't" -- "We shouldn't have given you the refund in the first place. And now that we have this audit that shows you owe 'x' number of dollars," our response to them is, well, then you should sue us, because that's what the R & T Code provides for.

And they say, no, no, no, we're just going to offset -- the State Controller is going to offset some money that you're owed against the amount that has been

1 audited.

2 And so, we're -- we're without a -- in fact, I
3 was going to talk to Marcy about this at -- at some
4 point. But there's no provision in here to take care of
5 that kind of situation. To go -- to come over to the
6 Board of Equalization.

7 MS. MANDEL: So if you -- if you have a motor
8 vehicle fuel audit, you're saying there's no petition
9 process?

10 MR. VINATIERI: That's correct. Well, it --

11 MS. MANDEL: The law provides no petition
12 process.

13 MR. VINATIERI: There is no petition process,
14 as I understand it, unless I'm -- I'm missing something.
15 And that could be, but -- yeah, we are just stuck with
16 the State Controller's office now, and they're saying we
17 did a good audit, and you owe us some money, turn it
18 over. And then the statute says that if the State
19 Controller has done an erroneous refund, then they're
20 supposed to either give it to the Board of Equalization
21 to do a deficiency determination or file a lawsuit
22 against the claimant, or against the party.

23 MS. MANDEL: Except that there's also a lot of different
24 types of authorities that I'm not familiar with about
25 what -- what -- what things can be offset, you know,
26 against other refunds that might be owed you from other
27 places. And maybe they have that general offset
28 authority. I just don't know.

1 MR. VINATIERI: Well, the problem is --

2 MS. MANDEL: It sounds like what -- that's what
3 they're saying.

4 MR. VINATIERI: -- it's put us in never never
5 land. I mean, we have no -- and it's pretty clear to me
6 that the audit is incorrect.

7 So, I -- you know, I'm waiting for them to come
8 to the Board of Equalization and give us a deficiency,
9 and then I'm happy. Let's -- let's fight over it. But
10 they're not doing that, they're just going to do an
11 offset.

12 MS. MANDEL: Have you talked to Mr. Shivaro?

13 MR. VINATIERI: I have not. But I thought as
14 long as we're doing this here, I thought maybe we ought
15 to have something in here that specifically says that if
16 you had a denial by the -- of the claim by the
17 Controller, then there should be an appeal right over
18 here to the Board of Equalization.

19 Okay, I put that under -- on page -- whatever,
20 it's page 14, I think.

21 MS. MANDEL: Assuming there's authority --

22 MR. LEVINE: You didn't get the Controller's
23 vote on our regs. telling the Controller what to do?

24 MR. VINATIERI: Well, I realize that there's --
25 there's departmental jealousies and that type of thing.

26 MS. MANDEL: And what's our -- you know, what's
27 our -- they're just trying to reflect the statutory
28 authorities, too. If there's not a statutory

1 authority -- I mean, it's -- we understand the -- but if
2 there's not -- I mean, that's --

3 MR. VINATIERI: Well, perhaps this is -- maybe
4 if there's not statutory authority then perhaps there
5 needs to be legislation for this kind of situation.

6 I don't know, obviously, how often this
7 happens.

8 MS. MANDEL: I mean, you can make the comments
9 and then I guess if they say, "Oh, well, it would be
10 nice, but we can't put anything in our column that says
11 there's statutory authority for appeal to us or a
12 petition on an -- on an audit, then -- then -- then the
13 next question is does somebody want to have legislation.

14 MR. VINATIERI: Yeah, that -- that would be
15 fine. I think my point is I wanted to bring it up
16 because it's out there

17 MS. MANDEL: Because you're like, aah, how
18 could this be --

19 MR. LEVINE: It just sounds like you're --
20 well, I haven't reviewed it, but what you're saying
21 makes sense to me. But it still sounds like you're
22 wanting us to put an interpretation of something that is
23 what the Controller is doing, and that it's a problem
24 with the Controller's interpretation or yours, but it's
25 between the taxpayer and the Controller.

26 It doesn't involve the Board.

27 MR. VINATIERI: No, I understand that. And the
28 reason -- the reason I bring it up is because if the

1 Controller were doing what I think the statute says to
2 do, they would either go to file a lawsuit against the
3 client, or they would come to the Board and have the
4 deficiency set out.

5 So -- but they're not going to do that, they're
6 going to do this collection thing, which is -- you know,
7 it's not fair.

8 MR. LEVINE: It sounds like it's not that much
9 different than the insurance tax. We -- we make
10 decisions on it, but we can't make the Commissioner
11 issue a billing, even if -- if it's taxable and we know
12 it.

13 The Commissioner decides to issue the billing.
14 Then it comes into our hands. It sounds like the same
15 thing.

16 MS. MANDEL: Yeah, you're -- you're -- well,
17 you talk to me later about --

18 MR. VINATIERI: I'll talk to you later. Okay.
19 If -- if you want to say that you don't have
20 the authority, then -- then it becomes an issue, maybe
21 there should be some legislation.

22 MR. HELLER: My guess is just like in your one
23 situation, we just don't have -- you don't necessarily
24 have an overpayment made to the Board in that situation,
25 when you're challenging an offset that they've made.

26 MR. VINATIERI: Well, they haven't -- they're
27 going -- they're threatening to do the offset.

28 MR. HELLER: Well, I'm just trying -- yeah, I'm

1 just trying to think it -- it just might not even fit
2 into any of our areas even if we wanted to say that it's
3 something we want to review. It's still going to be
4 tough to fit in, so it may be --

5 MR. VINATIERI: Yeah.

6 MR. HELLER: -- something that would be really
7 good for a statutory change.

8 MR. VINATIERI: Yeah, that could be what it is.

9 MS. PELLEGRINI: We are now on 2051.

10 MR. VINATIERI: I am sorry, there's --
11 there's --

12 MR. HELLER: A few more comments on that?

13 MR. VINATIERI: -- on this (c)(3), it's
14 Childhood Lead Poisoning Prevention.

15 MS. MANDEL: You just want to make that
16 parallel with your comment earlier on the petition?

17 MR. VINATIERI: That's correct. That's
18 correct.

19 MS. PELLEGRINI: That's why I was off pages.

20 MS. MANDEL: I know.

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SECTION 2051

MS. PELLEGRINI: 2051, Limitation Period.

MS. MANDEL: Yeah, all -- all of your comments that would have parallel claim for refund provisions --

MR. VINATIERI: Incorporated herein.

MS. MANDEL: -- incorporated herein.

MS. PELLEGRINI: Any comments on the Limitation Period? 2051.

MR. VINATIERI: I had one comment on page 17, item (j), Waivers. And -- and this is -- this might be surplusage -- surplusage, but this subdivision regarding waivers does not apply to claims for refund filed -- you know what, it doesn't matter. It's under that section.

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SECTION 2052

MS. PELLEGRINI: 2052, Failure to File Timely
Claim.

MS. MANDEL: I had one if you're trying to make
this into basic English.

MS. RUWART: Okay.

MS. MANDEL: Instead of saying on the second
line that -- again, you'd have to do the thing about
whether the section reference tells you how to do that,
but as provided, if you don't file a claim it
constitutes a waiver. Can we just say "is a waiver"?
Instead of "constitutes," which, you know, some people
are going to have to go to their dictionary and then
does that mean there is one or isn't one? What does it
mean to constitute? Why don't we just say it is.

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SECTION 2053

MS. PELLEGRINI: 2053, Content of Claim.

MS. ARMENTA-ROBERTS: I have a -- this is Joan Armenta-Roberts. I -- I don't know where exactly this should go under claims for refunds -- the claims for refund section, but it's the issue I brought to the Taxpayer Bill of Rights hearings.

It seems like somewhere there should be noted that the taxpayers are not allowed to do self-help, you know, refund claims on -- they can't just reduce their return by --

MS. MANDEL: The next period or --

MS. ARMENTA-ROBERTS: And there's nothing -- but I'd be kind of tooting my horn about this because there's nothing in any of the Board's publications that explains that a taxpayer cannot just credit their tax return for something they find out, oh, I -- I gave my customer credits in January, it's now June, I think I'll just put it on my next return.

They're not allowed to do that, and I agree with that, but it's not publicized anywhere. And taxpayers do this all the time, and auditors tell taxpayers they can do this all the time.

I've had Audits tell me, "Just tell your client take it on the next return."

And, you know, I know better, so I've been, you know, actually educating auditors, no, they can't do that because, you know, that could get denied if the

1 Statute of Limitations comes in and they -- you all know
2 what I'm talking about.

3 So, something should go in this to -- I'm
4 trying to -- trying to just ask the Board to put that in
5 more publications.

6 It's not -- it's not in pamphlets, not in the
7 regulations, not in annotations. It's nowhere. I think
8 it's in the audit manual. And the tax --

9 MR. LEVINE: I'm sure everyone agrees that
10 should be in the -- a regulatory thing. It should be
11 explicit.

12 MS. ARMENTA-ROBERTS: Something, because --
13 and -- and auditors allow it, and then --

14 MS. MANDEL: Unless they get caught by the
15 Statute of Limitations and then they don't.

16 MS. ARMENTA-ROBERTS: Right. They'll go, "Oh,
17 it's within this audit period. You know, you took it in
18 1999 and this audit period goes to 2000. You actually
19 should have taken it here, but we're going to let it go
20 because it's within the same audit period."

21 Well, the taxpayer thinks -- thinks it's okay,
22 and then they get caught with the Statute of
23 Limitations. It's huge, too.

24 MR. HELLER: So maybe that should be like right
25 at the beginning of the refund section, so the first
26 thing anybody looking at refunds sees is, "You should
27 not do this on your return. You should file a claim for
28 refund."

1 MS. ARMENTA-ROBERTS: You're not allowed to do
2 a -- I know staff calls it a self-help refund, right,
3 Bob?

4 So, you know, it's something that should be --
5 Taxpayer Bill -- I mean maybe a bulletin article.
6 Something, everything to get the word out because
7 it's -- I've -- I've seen taxpayer or auditors allow
8 little ones and then all of a sudden they see a big one
9 and go, "Oh, you know, we really shouldn't do this and
10 guess what, the statute's run out and you owe money."

11 MR. HELLER: Gee, there's all sorts of stuff.

12 MS. ARMENTA-ROBERTS: I didn't know where in
13 this section it should go, but somewhere.

14 MS. PELLEGRINI: Okay.

15 MR. MICKEY: On -- Kai Mickey again. On
16 subsection (b), I was wondering -- I know it says
17 "should also include a breakdown of the refund." Is
18 that something -- that's not even on the typical claim
19 for refund that the Board has, is that something that
20 needs to be there?

21 MR. HELLER: Well, it's something -- it's
22 currently requested in our publication, but I think it's
23 more dealing with claims for refunds. It's not commonly
24 provided and we could use the word "should" basically to
25 try to, you know, make it clear that we'd like to get it
26 but not to penalize people who don't.

27 So we could either clarify that or it could be
28 something that we could -- it can be rewritten or

1 removed if necessary.

2 MS. MANDEL: Yeah, I think the one -- the one
3 thing you have to watch out for when -- I know you use
4 the word "should" for we really would like to have it,
5 but I think others would view "should" is like saying
6 must. And that it's a mandatory phrase.

7 And if you've ever had to do research, as I
8 have had to do a long time ago over the particular
9 choice of words, and does "may" mean the same thing as,
10 you know --

11 MR. VINATIERI: Right.

12 MS. MANDEL: -- there's a lot -- there's case
13 or there's stuff in the codes on what the different
14 words mean.

15 MR. HELLER: So, it may --

16 MS. MANDEL: So, it's -- so, you just have to
17 watch for that kind of stuff.

18 MR. MICKEY: Maybe a clarification of not
19 including that doesn't invalidate the claim.

20 MR. VINATIERI: I -- I think -- I think the
21 word "may" -- you know, I -- I had a problem -- this is
22 Joe. I had a problem with that, also. Because it's
23 not -- definitely not in the statute.

24 So, I think if you make it discretionary --
25 discretionary on the part of the -- the claimant, that's
26 the way to handle it.

27 MS. MANDEL: I mean, if -- if there were a
28 statute that gave the Board the authority to establish

1 the requirements of what has to be in something, but --
2 you just -- if you're using the "should" -- oh, I'm
3 going to repeat myself, I am sorry.

4 If you're using "should" with that concept of
5 we really would like to have it, just watch that you're
6 not inadvertently creating mandatory requirements where
7 you don't mean to.

8 MR. MICKEY: A similar comment, please. Again,
9 Kai Mickey -- with subsection (c) now. Again, it says
10 "should," but it seems -- in my reading of that
11 subsection, it seems to be saying that if I have a claim
12 for refund that the state covers two quarters; that this
13 is asking me to spell out my basis for refund for the
14 one quarter, say the same thing for the next quarter.
15 If I'm covering four quarters, I'm going to say the same
16 thing four times in my claim for refund.

17 I don't know if that's what the Board is
18 looking for. The -- the Board's claim for refund right
19 now, is it set up that way? I don't think it's a
20 requirement that you do that. I'm not sure why that's
21 being put in here. So, maybe some clarification on what
22 this is in here for.

23 And so, it's really trying to specify --

24 MS. MANDEL: Well, what if you said something
25 like by -- by each each reporting period, to the extent
26 they differ, or something? I mean, I don't know.

27 MR. MICKEY: Part of -- of my question with
28 this is on a claim for refund you don't have the benefit

1 that you do under a petition of amending your claim
2 later when you realize that, wow, I should have said
3 these were interstate commerce instead of sales for
4 resale.

5 So, particularly when you file a claim for
6 refund and you don't know all the reasons that might
7 come up, you're going to file a claim for refund with
8 all the areas that might come up so you can address
9 that.

10 If you have to do that for each reporting
11 period, you know, it just seems like kind of a
12 redundancy in reporting.

13 MR. GOLOMB: This is Abe Golomb. Also this
14 relates to supporting documentation, you should mention
15 copies. You know.

16 MS. MANDEL: Yeah.

17 MR. GOLOMB: Because you'll end up with
18 originals that get lost, you know, and have a problem.

19 MS. MANDEL: Well, just generally -- generally,
20 we would say that anything -- any -- any provision under
21 the Claims for Refunds that has a parallel provision
22 under petitions, the same comments are going to apply.

23 MS. PELLEGRINI: Okay. Any more comments?

24 ---oOo---

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SECTION 2054

MS. PELLEGRINI: We're now on 2054.

MR. VINATIERI: I think on (d) once again we should put the discretionary "may" and delete "should."

MS. MANDEL: Okay, Joe, once again, any comments --

MR. VINATIERI: I heard you.

MS. PELLEGRINI: 2054.

MR. VINATIERI: I was short that time.

MS. PELLEGRINI: Contents of Claim for Refund under --

MS. MANDEL: I don't mean to be --

MS. PELLEGRINI: -- Diesel Fuel Tax Law.

MR. VINATIERI: Right.

MS. PELLEGRINI: Any comments?

MR. VINATIERI: I had a question about -- is -- is motor vehicle fuel not been -- specifically statutory, not subject to this refund?

Yeah, what -- what's happened to -- maybe I -- maybe it's covered and I missed it.

MR. HELLER: That's supposed to be covered by the general provisions. Only diesel fuel --

MR. VINATIERI: Is -- is --

MR. HELLER: -- is separated out --

MR. VINATIERI: Okay.

MR. HELLER: -- as one of the fuels.

MR. VINATIERI: Okay. So, as long -- okay, I just want to make sure it was covered.

1 MR. HELLER: And the intention was originally
2 that section -- I think it's 2001, is -- basically says
3 that this part generally applies to all of those listed
4 taxes and fees.

5 So, unless there's an exception then the rules
6 should apply to -- to all those parts -- those taxes and
7 fees listed in front.

8 MR. VINATIERI: Understood.

9 ---oOo---

10 SECTION 2055

11 MS. PELLEGRINI: Okay. 2055, Claim for Refund
12 Regarding Lost, Unmarketable or Condemned Alcoholic
13 Beverages.

14 ---oOo---

15 SECTION 2056

16 MS. PELLEGRINI: 2056, the Contents of Claims
17 for Refund Filed under the Cigarette and Tobacco
18 Products Tax Law.

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SECTION 2057

MS. PELLEGRINI: 2057, Address for --

MR. GOLOMB: Yes.

MS. PELLEGRINI: -- Filing a Claim for Refund.

MR. GOLOMB: There's a mistake in the address
for (a). The zip Code is wrong.

MR. HELLER: Oh, yes.

MS. RUWART: Yes, it is.

MR. GOLOMB: But also as it relates to just --
as it relates to claims, I think they can also be
hand-delivered, you know, et cetera, mailed, all that
kind of stuff.

MR. VINATIERI: Is this subject to your general
continuing objection?

MS. MANDEL: Yes. I was just trying to speed
things up by not having to be repetitive. But I guess I
have to be repetitive in trying to speed this up.

---oOo---

SECTION 2058

MS. PELLEGRINI: 2058, Acknowledgment of Claim.

MR. VINATIERI: I feel like my ability to speak
is diminished.

MR. GOLOMB: Yeah. As it relates to claim
acknowledgments, in the past it's been sometimes a
lengthy period of time for claims to be acknowledged. I
assume that's kind of cleared up.

MR. BUNTJER: Staffing issue.

MR. GOLOMB: Yeah.

1 MR. BUNTJER: And currently we are current.
2 So, that shouldn't be a problem.

3 MR. GOLOMB: Okay.

4 ---oOo---

5 SECTION 2059

6 MS. PELLEGRINI: 2059, Review Process and
7 Request for Additional Information.

8 MR. VINATIERI: I -- I changed the language on
9 the last sentence a little bit, to say, "The failure to
10 provide such information may result in a denial of the
11 claim for refund instead of being denied.

12 MR. HELLER: That's correct.

13 MR. VINATIERI: And I also put, "upon request,
14 the failure to provide such" -- blah, blah, blah.

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SECTIONS 2060 AND 2061

MS. PELLEGRINI: 2060, Action on the Claim.

MR. GOLOMB: Yes, I have a -- I don't know if it's the right section. But let's say the claim involves not just a documentation issue, but an interpretation of law issue. And the staff takes the position, obviously, the taxpayer is not correct. Taxpayer in their claim requests an Appeals Conference and/or a Board hearing.

So, obviously, if the staff does not agree with the taxpayer's position, obviously it goes forward. It's not automatically denied.

MS. MANDEL: I think that's in 2061, sort of.

MR. GOLOMB: Sort of. But I thought I'd try to get that real clear, because --

MS. MANDEL: Is there something in -- maybe in 60 which potentially gives the conflict of 61 on what you're saying, maybe?

MR. LEVINE: What's the conflict? I'm --

MS. MANDEL: Well, I don't know. I'm trying to figure out what --

MR. LEVINE: It talks about recommend, so they're going to recommend grant, deny or partial.

MR. GOLOMB: Well, let's say -- let's say you're arguing an interpretation of law.

MS. MANDEL: Well, that's in (d), I think, Abe. If -- if you get a letter described in (c) -- in (c), which is if they recommend deny, they're going to send

1 you a letter with a recommendation and explanation. You
2 can agree or disagree. If you disagree, which is the
3 third one; the first two are agreed, then you can
4 request that Appeals Conference or hearing, and then 61
5 says there's discretion on that.

6 MR. GOLOMB: And that's what I want to get at.

7 MS. MANDEL: Okay.

8 MR. GOLOMB: That my understanding was you
9 request one; you're granted it.

10 MR. MICKEY: Well, that would be a question I
11 agree on 2061 the same as with the other one where you
12 take out the liberally granted and just say that the
13 Board will grant an Appeals Conference on Claims for
14 Refunds, like they do on petitions.

15 MR. LEVINE: That's never been the rule. And
16 this is different than late protests, which are
17 substitute for petitions. There are several reasons to
18 deny. The classic is you had a petition, you had a
19 hearing, the Board denied it, you file a claim, there is
20 nothing new, it doesn't go to an Appeals Conference, it
21 just gets denied, you can go to Court.

22 MR. GOLOMB: Don't have a problem with that.

23 MR. LEVINE: Another may be it's a follow-on
24 audit, again you had the Board hearing, this is
25 discretionary.

26 MS. MANDEL: Right.

27 MR. LEVINE: Nothing new has happened.

28 MS. MANDEL: And there's no statutory right to

1 a --

2 MR. LEVINE: Right.

3 MS. MANDEL: -- oral hearing --

4 MR. GOLOMB: Then say that.

5 MS. MANDEL: -- is what -- where he is.

6 MR. GOLOMB: Yeah, just say that. That's -- I
7 don't have a problem with -- that's not the kind I'm
8 talking about, by the way, you know, where you're going
9 to Court.

10 What I'm talking about is the brand new claim
11 not involved in any petitions or anything. And --

12 MR. LEVINE: Well, maybe Bob could comment on
13 when new claims, no prior stuff, are not allowed a
14 conference.

15 MR. BUNTJER: I think -- the only thing I can
16 think about -- this is Bob Buntjer from the Refund
17 Section -- is if the claim isn't timely, if somebody
18 files a claim today for something made in 1995, we're
19 not going to entertain that claim. We are not going to
20 go into the Appeals Conference and argue whether or not
21 it's timely or not.

22 Off the top of my head, that's about the only
23 exception when we will not grant an Appeals Conference,
24 other than those Dave has previously mentioned, where
25 someone has been through the process.

26 If someone has been through an Appeals
27 Conference and then pays it and wants a Board hearing,
28 we'll go ahead and give him a Board hearing on that

1 claim for refund.

2 So --

3 MR. DAVIS: This is Ken Davis.

4 Why not then just say that under these specific
5 circumstances the claim will be denied, otherwise it
6 will be allowed?

7 MR. LEVINE: I personally am against that
8 because I would not want to preclude something else.

9 It is -- it's such -- there's not a real -- I'm
10 guessing that you're talking in theory and you don't
11 have a real problem. Have either of you had an actual
12 problem -- Abe or Ken -- an actual problem in getting an
13 Appeals Conference or a Board hearing where you thought
14 you should have one?

15 MR. GOLOMB: No, but what I'm concerned about
16 is on a go forward basis this becomes statute and can be
17 interpreted differently in the future than it's being
18 interpreted today when the current decision-makers are
19 no longer around.

20 And that's part of the problem that I've seen
21 in other areas along the same lines.

22 In other words, we have some policy that's
23 unwritten or partially written. The person that has
24 implemented that parti -- policy, moves on, new people
25 come in and they only were relying on the words, and the
26 words say what they say. They say, "Well, see, we have
27 discretion. I'm sorry, our discretion is you don't get
28 it."

1 MR. LEVINE: I'd say two things about that.
2 Number one, the -- there -- under current, where it is
3 now, the law is clear. No right to a hearing, and
4 there's nothing in the law that would support a
5 requirement for a hearing.

6 This is just putting in the reg. exactly what
7 the law says, and what we've been doing. And I
8 understand your point, interpretations can change.

9 But if it's a problem, especially when this
10 directly reflects what the law is and what we've been
11 doing and the proper way to do it, is you challenge the
12 later interpretation.

13 But because someone could misapply a rule at,
14 I'd say, an egregious level, I don't think it's a reason
15 to change it. And you dealt with -- the Board has a
16 long institutional memory, and I think you probably know
17 what I'm talking about.

18 I remember things that happened before I was
19 here. And other people who started after me remember
20 things that happened that I've told them about. It just
21 becomes part of the -- the way things are. And that's
22 why like on -- I was talking about late protests.

23 Historically, we did it narrowly. It's only
24 grown. And a lot of that, quite frankly, is because of
25 Board Member involvement.

26 But it's never shrunk. And we maintain the
27 institutional knowledge that that's how we handle late
28 protests. And I -- I don't think that -- that it

1 warrants an attempt to list every possible reason we'd
2 refuse because I don't think there's any problem.

3 MR. SCHUTZ: This is Chris Schutz. I have one
4 quick comment on -- if -- if the Board doesn't take any
5 action on a claim for refund within six months, it's
6 deemed denied and they can --

7 MS. MANDEL: By law they can go to Court.

8 MR. SCHUTZ: -- they can go to Court.

9 MS. MANDEL: It's -- it's -- it's permissive
10 denial.

11 MR. SCHUTZ: It's -- yeah.

12 Are these --

13 MR. LEVINE: Geneva Towers.

14 MR. SCHUTZ: Are these the three actions then
15 that -- that the Board would either have to take, what's
16 in that six-month period, or if they're doing an
17 audit -- an ongoing audit we've accepted your claim for
18 refund or we're looking at it. It's a conflict, see.

19 MS. MANDEL: You -- a person -- a person
20 can't -- it's a permissive deemed denial.

21 MR. SCHUTZ: Right.

22 MS. MANDEL: So it's a -- you, as a
23 taxpayer --

24 MR. SCHUTZ: Right.

25 MS. MANDEL: -- may deem your claim denied.
26 You can do that at any point. If you -- if you decide
27 you're going to file your lawsuit and the refund --

28 MR. SCHUTZ: After the six-month period --

1 MS. MANDEL: -- after the six-month period,
2 and the Refund Section is actively working, has asked
3 you for a lot of information and you're like, uhh, uhh,
4 uhh --

5 MR. SCHUTZ: Right.

6 MS. MANDEL: -- I'm just going to go to Court,
7 then, you know, you hopefully were advised by your
8 lawyer because there will be questions potentially
9 raised about failure to exhaust another issue.

10 So, people, when they make the decision to file
11 a lawsuit when they're in the midst of an administrative
12 process, you know, there's risks and benefits. They
13 don't have to deem it denied. They can -- they can wait
14 for an actual written denial. They're not -- they're
15 not required.

16 And that's in contrast to some -- actually,
17 some local business tax things where -- or the regular
18 Government Code where claims might actually be denied.

19 But it's a permissive denial and you're -- and
20 sometimes if people know that it's an issue that they
21 think is going to have to be decided by the Courts, they
22 probably would, you know, assuming all the information
23 has been in -- they would have had some conversation
24 with Refunds and -- or whatever.

25 But it's a -- it's a permissive denial and they
26 can do that. And if they do it early, they --

27 MR. SCHUTZ: And then can some reference be
28 made in this to that particular statute?

1 MS. MANDEL: That -- that they have --
2 MR. SCHUTZ: That within six months they have a
3 permissive.
4 MS. MANDEL: Oh, just to -- so that people
5 know?
6 MR. SCHUTZ: Right.
7 MR. HELLER: We weren't really trying to
8 explain how to sue the Board at this stage. Basically,
9 or that --
10 MR. LEVINE: You know, it does relate because
11 not only does it just make sense to complete the
12 process, but as soon as someone files suit we close the
13 file, we're done. It's denied.
14 So, it really does kind of complete the picture
15 because we're effectively by regulation telling Refunds
16 or Appeals, whoever has it, stop -- or Board hearing's
17 scheduled, someone files suit, pull it off.
18 MR. VINATIERI: You have -- you have the
19 Superior Court reference in the Board -- general Board
20 hearing procedures, and maybe -- maybe that ought to be
21 put here, also.
22 MS. PELLEGRINI: Okay, we have two more
23 sections to go through before we get to Article 4. I
24 would like to get through them and then break for lunch.
25 MR. DAVIS: I just wanted to -- Ken Davis
26 again. I just wanted to briefly address what David said
27 about the Board institutional memory regarding when the
28 requests will be granted for claim for refund.

1 This institutional memory should be more
2 clearly specified to taxpayers, otherwise they're at a
3 disadvantage. They don't have an institutional
4 memory as the Board does. And I would think there would
5 be some form of clarification on this. You could give
6 yourself an out for unusual situations that haven't been
7 contemplated, but where you do at least lay out the
8 common situations where a refund will not be granted

9 MR. LEVINE: I agree with that. I mean, it
10 makes sense to add in "a hearing and conference will
11 generally be denied when." And we wouldn't want to make
12 that complete, either, because sometimes we do grant a
13 hearing even in those cases where we normally don't.

14 But that makes sense, to make it clear when --
15 so, I -- I think that's worthwhile.

16 MR. HELLER: So we're thinking like listing
17 some of the cri-- the situations that we normally
18 wouldn't --

19 MR. LEVINE: Grant.

20 MR. HELLER: -- wouldn't grant a hearing but --

21 MS. MANDEL: Without limiting yourselves.

22 MR. LEVINE: Just say --

23 MR. HELLER: -- but also to state those so
24 taxpayers will be aware that those are those -- that we
25 look at those circumstances differently, and then just
26 to still have something that's kind of a catchall.

27 MR. LEVINE: Yeah, I would suggest just
28 adding --

1 MR. HELLER: There's still --
2 MR. LEVINE: -- a -- a thing saying, for
3 example, they're generally denied when, and list the --
4 like the two major ones.
5 MS. PELLEGRINI: Okay, 2062, refunds over
6 50,000.
7 MR. VINATIERI: I'm -- I'm sorry. To follow up
8 on -- on what was just said, my -- my thought, of
9 course, is if you have new information, the -- the legal
10 arguments or it's going to change your case law,
11 whatever, those are some of the -- the positives and --
12 yeah.
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SECTION 2062

MS. PELLEGRINI: The Refunds over 50,000.

MS. ARMENTA-ROBERTS: Should there be -- this is Joan Armenta-Roberts. Should there be a section on -- on denials of refunds for over 50,000, a procedure for those? I know those go before the Board, too.

I had a question -- I guess for Bob. Do they -- Buntjer -- are those usually -- taxpayer usually notified that those are going to the Board?

MR. BUNTJER: Yes, we usually send a pending denial that we are going to present it to the Board and then we allow probably 30 to 60 days for the taxpayer to respond.

MS. ARMENTA-ROBERTS: If they respond then -- with -- arguments why they think -- is that -- is that sent along with -- I don't remember ever seeing that come with the package of denials -- recommendations for a denial.

MS. MANDEL: Yeah, we --

MS. ARMENTA-ROBERTS: And you get the staff's recommendation --

MS. MANDEL: We --

MS. ARMENTA-ROBERTS: -- but do you get a --

MR. BUNTJER: Well, usually, if they come back with arguments, you know, like say new arguments or whatever, then we pull it off that -- you know, denial recommendation. We evaluate those arguments and respond to those, so that by the time we finish at least we

1 would have made the taxpayer aware -- aware of our
2 position.

3 MS. ARMENTA-ROBERTS: So they are sent a letter
4 saying, "This is going to the Board." And we get to
5 the -- the late protest I found that wasn't happening
6 with the late protests, denials of the request for
7 relief of -- not late protests, request for relief of
8 penalties.

9 So, it's kind of a different area, but I was
10 just making sure that they get letters on this, too.

11 MR. SHAH: I don't think they know when it's
12 going to be on the Board, no.

13 MS. ARMENTA-ROBERTS: No.

14 MR. SHAH: Because --

15 MS. PELLEGRINI: They're given a time line of
16 approximately when it will be heard, but not the
17 specific Board meeting.

18 MR. BUNTJER: Thank you.

19 MS. PELLEGRINI: And it's a pretty short time
20 line there.

21 MS. MANDEL: You're thinking do we get -- does
22 the Board get told that the taxpayer thinks it had more
23 resales than are being allowed or something?

24 MS. ARMENTA-ROBERTS: Uh-huh. Are the --
25 because I know the Board gets a summary of staff's
26 reason for denying the claim for refund, but does -- do
27 they see what the taxpayer argued, also? Something on
28 the taxpayer's behalf.

1 Or if the taxpayer agrees now that it's being
2 denied, and they agree it should be denied.

3 MR. BUNTJER: Usually when we prepare the
4 summary on the denial it will state what the taxpayer's
5 position is. And then why the staff disagrees with that
6 position, and then we indicate whether the taxpayer
7 concurs or doesn't or is noncommittal, and usually if
8 they're noncommittal then we advise them of their
9 statutory rights, or appeal rights.

10 MS. PELLEGRINI: Okay. Anything else?

11 ---oOo---

12 SECTION 2063

13 MS. PELLEGRINI: We have 2063, Credits and
14 Offsets.

15 Okay, we are now on Article 4A and it is,
16 according to that clock, about seven minutes after. I
17 suggest we reconvene at 1:15. Right here. Thank you.

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P.M. SESSION

ARTICLE 4A

REQUESTS FOR INNOCENT SPOUSE RELIEF UNDER THE

SALES AND USE TAX LAW

SECTION 2070

MS. PELLEGRINI: Okay, we are reconvening the Interested Parties Meeting, and we are on Article 4A, the Requests for Innocent Spouse Relief under the Sales and Use Tax Law.

2070, Requests for Innocent Spouse Relief.

Any comments?

We're missing a few people. Was Marcy returning?

MS. OLSON: I don't know, I didn't ask her.

MR. VINATIERI: Yes, she was going to.

MS. PELLEGRINI: I thought she was. And Abe? I know Kai was not.

MR. HELLER: -- he was gone.

MS. PELLEGRINI: Yeah.

MR. VINATIERI: Is Neil Shah with us?

MS. PELLEGRINI: Who is present on the telephone?

MS. REESE: You have Tanya, Sabina and Jim Herd from Board Member Yee's office.

MS. PELLEGRINI: Thank you.

MR. SHAH: Neil Shah from Mr. Parrish's office.

MS. PELLEGRINI: Thank you. Okay.

Comments on 2070, the Request for Innocent

1 Spouse Relief.

2 ---oOo---

3 SECTION 2071

4 MS. PELLEGRINI: 2071, Reviewing Request for
5 Innocent Spouse Relief.

6 ---oOo---

7 SECTION 2072

8 MS. PELLEGRINI: 2072, Request for
9 Reconsideration by the Board.

10 ---oOo---

11 ARTICLE 4B

12 SUCCESSOR'S REQUEST FOR RELIEF OF PENALTY

13 UNDER THE SALES AND USE TAX LAW

14 SECTION 2075

15 MS. PELLEGRINI: 4B, Successor Request for
16 Relief of Penalty under the Sales and Use Tax Law.

17 7075, Successor Relief For Penalty.

18 I'm sorry, Request for Relief.

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ARTICLE 4C

OTHER REQUESTS FOR RELIEF OF PENALTIES AND INTEREST

SECTION 2080

MS. PELLEGRINI: Article 4C, Other Requests for Relief of Penalties and Interest.

2080, No Independent Right to Oral Board Hearing.

MS. ARMENTA-ROBERTS: Yeah, I have a -- a question on this, is that I guess this is for Board's Legal. Is that if a taxpayer has a request for relief of penalty, is this saying they don't have the -- they don't have a right to go to hearing -- for a hearing?

MR. HELLER: There is no statutory right to a hearing before the Board. But --

MS. ARMENTA-ROBERTS: Because administrative remedies, though, I think they -- they do allow them to.

MR. HELLER: They have the -- they have the right to have -- to request for relief and then the relief process basically is just to -- to review the request.

It doesn't really -- the statute doesn't specifically say there's a right to a hearing before the Board.

MS. ARMENTA-ROBERTS: Well, I thought this was fixed. I had a -- a case but now it's actually ended up being a claim for refund or -- the penalty was paid. A claim for refund was put in. And then it went through the process that way. But --

1 MR. HELLER: We do generally grant hearings
2 when there's still a disagreement after staff has
3 reviewed a request. So, it's really not intended to
4 change current policy, which is that is they generally
5 are granted. But it's still not -- I mean, that's like
6 a statutory right.

7 MS. ARMENTA-ROBERTS: Well, I'm looking for
8 where the -- the remedy was put in. I actually took
9 this to Ray Hirsig. I had a situation where a taxpayer
10 filed for request for relief of penalty.

11 MR. HELLER: Okay.

12 MS. ARMENTA-ROBERTS: They didn't get a
13 response right away, so it was eventually denied, but
14 when it was -- they were sent a letter of denial, it was
15 already heard by the Board. It had already gone up into
16 the Board as a Consent item.

17 And so, somehow it's supposed to -- there's
18 supposed to be a remedy put in so that the taxpayer
19 would have been told, "We are recommending" -- kind of
20 what Bob Buntjer said with the claim for refund, "We're
21 recommending that your -- your request for relief of
22 penalty be denied, and it's going to be going to the
23 Board Members for decision."

24 I'm wondering where that is now.

25 MR. YOUNG: I could answer that. This is Joe
26 Young.

27 With that particular situation, the Return
28 Analysis will send out a letter to the taxpayer that --

1 informing them that the penalty relief request is being
2 recommended to the Board for denial, and it will list,
3 you know, the web site, you know -- the -- that is --
4 intended to be scheduled for this particular Board
5 hearing date, but it may change, you know, at the
6 discretion of the Board Member.

7 But this will be -- the letter is being sent to
8 the taxpayer informing them that, you know, through
9 staff recommendation we denied the relief request.

10 MS. ARMENTA-ROBERTS: And I know that the --
11 part of the remedy was supposed to be the -- they got
12 that letter, they took it back and said it should have
13 the reasons, not just we're denying it, so that the
14 taxpayer can say, "Oh, okay, you have read everything I
15 presented and you still don't agree." So, they know
16 that maybe something was missing or -- or, you follow
17 me?

18 MR. YOUNG: No, I think -- I believe -- you
19 know, I can't speak for the Return Analysis Section, but
20 I do review those penalty relief request denials. And I
21 believe they -- I could be wrong, that when -- when they
22 send a letter out to the taxpayer informing them that
23 the recommendation will be presented to the Board, they
24 will tell them the reasons why, the reason that they are
25 being denied.

26 And also right now, we've added another
27 provision that they may request a reconsideration of
28 that denial if they have new information.

1 MS. ARMENTA-ROBERTS: And that's what we are
2 looking for, because this one --

3 MR. YOUNG: Right.

4 MS. ARMENTA-ROBERTS: -- because this one -- it
5 was before they could -- they were -- they kept
6 following up saying this is what's going on with it and
7 have you made a decision. And nothing was sent until it
8 was denied and the Board already had --

9 MR. YOUNG: Right now we have recommended that.
10 You know, they actually receive a letter notifying
11 that -- you know, the recommendation denied, but they
12 also have -- have the right to request a reconsideration
13 if they have new information to -- you know, maybe the
14 staff can change their mind.

15 MS. ARMENTA-ROBERTS: So, then if you get the
16 information, you still use -- staff says, "We still
17 think it should be denied," then the only -- is the only
18 recourse at that point to -- to pay it and file a claim
19 for refund.

20 MR. YOUNG: That's correct.

21 MS. ARMENTA-ROBERTS: Because --

22 MR. YOUNG: Yes, because like I said, the
23 statute does not provide a -- any further remedy other
24 than, you know, paying and filing claim for refund.

25 MS. ARMENTA-ROBERTS: Or a request for relief
26 penalty.

27 MR. HELLER: Yeah, but I think -- we do have
28 for -- as far as notifying the -- the requesting person

1 of the determination of the Department, that's in
2 Section 2087(d), and specifically says, "Once the
3 determination of Subdivision (c)" which talks
4 about deciding whether relief is warranted, "the
5 assigned staff member shall prepare and mail the person
6 requesting relief a letter containing his or her
7 decision and an explanation thereof.

8 So, it doesn't -- I don't know if it has the
9 detail that we're looking for, but --

10 MS. ARMENTA-ROBERTS: Where -- where are you
11 reading?

12 MR. HELLER: I'm reading -- I'm on page 35.

13 MS. ARMENTA-ROBERTS: Okay.

14 MR. HELLER: This is -- it should be Section
15 2087, subdivision (d), and then -- yeah.

16 MS. ARMENTA-ROBERTS: It says "referring to the
17 same request for relief of penalty."

18 MR. HELLER: Yeah, this is actually for all the
19 requests. The way it's set up is that it discusses how
20 to do a request under the four different -- the four
21 different general types of requests. And then it
22 goes, this -- I'm talking about the article I was
23 discussing, and that article then concludes with -- with
24 assigning of the request for review and then the actual
25 review of the request in 2087.

26 And so, it's -- really what it does, it sets up
27 how to go ahead and make a request first for each
28 different type. So, say you have a disaster request; it

1 explains how to do that one as opposed to a reasonable
2 cause request.

3 And then once you've done it -- once it lists
4 all the different types of requests and explains those
5 procedures, then it goes into review and it applies to
6 all the different types of requests.

7 So, it's -- the provisions are in there and
8 they are generally applied to all the different types of
9 requests listed in the article.

10 But it doesn't -- does not provide for the
11 additional right to an oral hearing before the Board.

12 MR. VINATIERI: And I have a similar situation.
13 We had an EFT penalty. Yeah. And, I mean, there was a
14 lot of money. And the problem is you get into a
15 situation where you -- let's say staff disagrees with
16 you. They recommend the penalty to the Board; the Board
17 upholds the penalty; then you end up paying the penalty
18 and filing a claim for refund and going throughout --
19 going down that route.

20 In my mind, it -- it would be much better if we
21 had a system by which those -- those penalties could be
22 reviewed, because if it turns out later that relief is
23 granted, you end up getting your claim for refund back,
24 that's -- you know, how many money -- many months later
25 and how many dollars out of pocket?

26 And what you're doing is you're -- you're
27 essentially taking -- it's almost like a pre--
28 pre-deprivation -- there's no pre-deprivation